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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,247	11/28/2003	Richard M. Micciulla	MIC-101	1638
41358	7590	05/23/2006	EXAMINER	
SCOTT LEFTON 59 ORIENT AVENUE MELROSE, MA 02176			CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/724,247

Applicant(s)

MICCIULLA, RICHARD M.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 24-28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10-13, 15-17 and 19-21 is/are rejected.
- 7) ☒ Claim(s) 6, 9, 14 and 18 is/are objected to.
- 8) ☒ Claim(s) 1-28 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-28-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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Claims 1-28 are pending.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-23, drawn to a tab plate, classified in class 220, subclass 574.
- II. Claims 24 and 28, drawn to a method of use of filling the plate with food, classified in class 426, subclass unknown.
- III. Claim 25, drawn to a method of use of the tab as an eating aid in picking food up with utensils, classified in class 81, subclass unknown.
- IV. Claim 26, drawn to a method of use of supporting the plate with a weight placed on the tab, classified in class 248, subclass unknown.
- V. Claim 27, drawn to a method of use of holding utensils, classified in class 81, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and (II, III, IV and V) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the plate doesn't have to be used with food, the tab doesn't have to be used as an eating aid, the tab doesn't have to be used with a weight and the tab and plate don't need to hold utensils.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

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During a telephone conversation with Mr. Lefton on April 11, 2006 a provisional election was made with traverse to prosecute the invention of the product of the tab plate, claims 1-23.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 24-28 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The means plus function limitations found in the claims properly invoke 112, sixth paragraph.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 12, 15-17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lai.

Lai discloses a tab plate comprising a planar center portion (center portion of skillet 1), a plate top surface bounded by a retaining perimeter means (the sidewalls of skillet 1), the perimeter means including an outer edge (lip 11) and means for stiffening (the bend in the lip 11 and the sidewall), at least one tab (handle 6) extending outwards from the perimeter means, the tab top surface is oriented substantially parallel to the plate top surface as shown in Fig. 2 and having a longitudinal axis oriented substantially orthogonal to the outer edge of the perimeter means in an upward direction when the handle 6 is rotated to extend upwardly, the tab is a handle and therefore provides means for stabilizing, the tab has a hinge (means for articulation)

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and may be folded upwards and over the center portion of the plate to provide gripping means when urged towards food resting on the center portion.

Claims 1-3, 11-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg.

Goldberg discloses a tab plate as shown in Fig. 5 comprising a planar center portion (center portion of pot 110), a plate top surface bounded by a retaining perimeter means (the sidewalls of pot 110), the perimeter means including an outer edge (lip of pot 110) and means for stiffening (lip and the sidewall of pot 110), at least one tab (handle 113) extending outwards from the perimeter means, the tab top surface is oriented substantially parallel to the plate top surface as shown in solid lines of Fig. 5 and having a longitudinal axis oriented substantially orthogonal to the outer edge of the perimeter means in an upward direction when the handle 113 is rotated to extend upwardly, the tab is a handle and therefore provides means for stabilizing, the tab has a hinge (means for articulation) and may be folded upwards and over the center portion of the plate to provide gripping means when urged towards food resting on the center portion.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 7, 8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg.

Goldberg discloses the invention except for the convexly shaped tab lip of claim 4 and the raised pattern of claims 19 and 20. Re claims 4, 5, 7 and 8, it would have been obvious to

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modify the outer edge of Goldberg to have rounded convexly shaped edges on its handle 113 to conform to a person's grip as well as to provide a comfortable grip and reduce the hazard of sharp edges and corners. Official notice is taken that a raised pattern on a pot bottom surface and on a bottom surface of a handle is well known. Re claims 19 and 20, it would have been obvious to add a raised pattern to the bottom surface of a pot and a handle to provide a surface which doesn't easily slide so that the pot doesn't move once placed on a burner and the handle doesn't slip from a person's grip.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai.

Re claim 10, Lai discloses the invention except for the height no greater than 20% of the nominal width of the plate limitation. It would have been obvious to reduce the height of the sidewall so that the height is no greater than 20% of the nominal width of the plate to provide a skillet with a lower wall which allows a reduced stacking height so that the skillet takes up less space.

Re claim 11, Lai discloses the invention except for the material. Official notice is taken that skillets of molded plastic are well known. It would have been obvious to modify the material to be molded plastic to provide an easily molded skillet and avoid the necessary cutting and shaping of metal skillets.


Claims 22 and 23 are allowed.

Claims 6, 9, 14 and 18 are objected to as depending from a rejected base claim but would be allowable if amended to have all the limitations of the independent claim and all intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner has an increased flextime schedule (IFP) with no fixed or normal work schedule.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
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sjc